

**Attorney for Debtor Herbert Edward Miller**

**IN THE UNITED STATES BANKRUPTCY COURT  
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION**

In re:	)	Case No.:	2018-26373
	)	Chapter:	13
HERBERT EDWARD MILLER,	)	DC No.:	JHH-1
	)		
Debtor	)	Date:	February 12, 2019
	)	Time:	3:00 p.m.
	)	Courtroom No.:	33; Department E
	)	Judge:	Hon. Ronald H. Sargis
	)		
	)	United States Courthouse	
	)	501 I Street, 6 <sup>th</sup> Floor	
	)	Sacramento, CA 95814	
	)		

**DECLARATION OF HERBERT EDWARD MILLER IN SUPPORT OF  
DEBTOR'S REPLY TO TRUSTEE'S RESPONSE TO  
DEBTOR'S MOTION TO RECONSIDER ORDER DISMISSING CASE**

I, HERBERT EDWARD MILLER, declare as follows:

1. I am the Debtor (“Debtor”) in the above-captioned bankruptcy case.
2. On or about October 9, 2018, I filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code. I filed my petition in this case on an urgent, rush emergency basis and so filed so called “skeletal petition.” Furthermore, I at this time could not retain counsel, and so I had no choice by to proceed *in pro se*.
3. At the time I filed my voluntary petition in this case, I didn't realize at that time, when I filed *in pro se*, that chapter 13 is much more complex, involved, and difficult than chapter 7. By the time I realized this and so learned this, it was too late. Once I had filed and once I, too late, learned chapter 13 is much more complex, involved, and difficult than chapter 7, I simply

**Petition for Reconsideration of Order Dismissing Case – Reply [Trustee]  
Miller Declaration  
In re Herbert Edward Miller; Case No. 2018-26373**

1 did not and was not able to understand the procedure and what was required of me as case  
2 unfolded during first month or so, until as a direct consequence of this my case was inevitably  
3 dismissed. I did not file and never proceeded in so-called "bad faith;" that is, I simply did not  
4 understand what was required of me and I simply could not keep up. That is all that happened.  
5 The bottom line is that my failure to meet requirements was a consequence of only my inability  
6 to understand requirements, and a consequence of this alone.

7 4. Consequent to the above, I understand that on or about November 7, 2018 this  
8 Court dismissed my case.

9 5. Thereafter, after dismissal realizing I cannot possibly proceed on my own *in pro*  
10 *se*, I retained Judson Henry to represent me in this above-captioned chapter 13 case. Upon  
11 review of my case, during mid January 2019, to the surprise of my counsel Judson Henry (I am  
12 informed) just as much as to my own surprise, we learned that, despite dismissal of my case  
13 having been entered in early November 2018, my case, inexplicably, nonetheless remained open  
14 as of mid January 2019.

15 6. Back in October 2018, I had scheduled a large amount of household items, with a  
16 value I believed to be in excess of \$50,000. However, during the time-period between then and  
17 now, the secured creditor with an alleged claim secured by the real property upon which all of  
18 the same household items were stored foreclosed, took possession of all of the same household  
19 items and thereafter sold all of them. Because of this, I am informed and believe that at this  
20 point in time if I were to proceed in chapter 7, my case would turn out to be a so-called "no  
21 asset" case.

22 7. Notwithstanding any of the above, I am now at present in an even better posture  
23 to reorganize than I was last fall. This is because my business results, both in terms of prospects  
24 as well as presently fully consummated deals, have continued to improve to an even greater  
25 extent over the past approximately half year. What my business activity entails is that I locate  
26 distressed real properties, then locate investors who are interested in purchasing and  
27 rehabilitating these properties, in both senses of contractual debt issues as well as physical  
28 property issues. I earn income upon the successful closure of such real property rehabilitation

1 projects. I presently am doing better than I have at any time over the past few years, and very  
2 importantly better than in October 2018 when I filed my petition in this case. Furthermore, I  
3 very much do want to reorganize, especially because I now very much have the means to do so  
4 and very reasonably can foresee I will continue to have the means to do so going in to the future.  
5 I have been advised that in order to reorganize that, because of my total amount of secured debt,  
6 I must reorganize under chapter 11, not chapter 13. Because I firmly believe I have the means to  
7 reorganize successfully, and also meet my administrative costs in doing so, and most importantly  
8 meet my required payments to creditors ongoing, I now desire to proceed under chapter 11, and I  
9 believe being allowed to do so will be the most beneficial course forward for my creditors as a  
10 whole, as well as for myself.

11 8. As above, what I do for business and income is I located distressed properties that  
12 are close to a foreclosure or other type of disadvantageous sale, thereafter locate investor(s) who  
13 are interested in intervening with a purchase offer more advantageous to all interested parties  
14 involved, and then I work, as necessary, to facilitate the actual transactions as proposed. I am at  
15 present doing very well with this, and I have steadily and consistently increased my business  
16 activity and bottom line revenue results over the past approximately two years. In keeping with  
17 this, I am presently doing even better than I was last fall when I filed this case under chapter 13.  
18 At present, I have several I have facilitated that are very near closure, with many more that are  
19 in the “pipeline” at various stages, and so I can with high confidence very reasonably foresee  
20 consistent income from which to fund plan payments, and with very high likelihood of this  
21 continuing onward into the future.

22 9. From the time immediately prior to my petition date of October 9, 2018 all the  
23 way through to the present, I have received litigation and foreclosure threats and actions  
24 consequent to my prior restricted cash flows and need for debt reorganization. I have a strong  
25 need and therefore firm desire to proceed with this case rather than file a new case, in order to, as  
26 I am informed, prevent the appearance of such a filing being “not in good faith” as defined under  
27 11 U.S.C. § 362(c)(3), due to my new case being a second case filed within one year. Even more  
28 importantly, I desire to reorganize my debts, commence plan payments to my creditors, and

1 move on with my business and my life, the sooner the better. Here, the truth of the matter is  
2 there was no bad faith of any kind whatsoever on my part; I simply did not understand  
3 procedural requirements – that is all. It was my full intent to reorganize when I filed my chapter  
4 13 back in October 2018, and this remains fully my intent at this time.

5 10. Because this case remains open, I understand it would be highly disadvantageous  
6 for me to file a new case, which would result in me having two open bankruptcy cases at the  
7 same time. Because I am ready and able to proceed with a reorganization right now in the  
8 present, yet for whatever reason this case remains open, it seems to me only fair and equitable  
9 the Court should, in order to in the simplest manner clean thing up, vacate its prior Order  
10 Dismissing Case and the convert this case to chapter 11, so that I may then simply proceed to  
11 reorganize under chapter 11.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
13 February 5, 2019 at Sacramento, California.

14 Dated: February 5, 2019

15 By: /s/ Herbert Edward Miller  
16 Herbert Edward Miller, Declarant; Debtor  
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